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Paper No. 4

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JUL 3 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Chao et al. :
Application No. 09/727,242 : DECISION GRANTING PETITION
Filed: 30 November, 2000 :
Attorney Docket No. P/3483-13 :

This is a decision on the petition filed 9 February, 2001, which is being treated as a petition requesting that the "Notice Of Omitted Item(s) in a Nonprovisional Application" mailed on 16 January, 2001, in the above-identified application be withdrawn.

The petition is GRANTED.

The application was filed on 30 November, 2000. However, on 16 January, 2001, Initial Patent Examination Division mailed the "Notice" stating that the application had been accorded a filing date of 3 November, 2000, and advising applicant that page 48 of the specification appeared to have been omitted and that a signed oath or declaration, and the surcharge for its late filing was required.

In response, on 9 February, 2001, the present petition was filed. Petitioners assert that page 48 of the specification was filed with the other application papers deposited on 30 November, 2000, and that a signed oath or declaration is not required in this application. Petitioners have further supplied a copy of a postcard receipt as well as the Express Mail label.

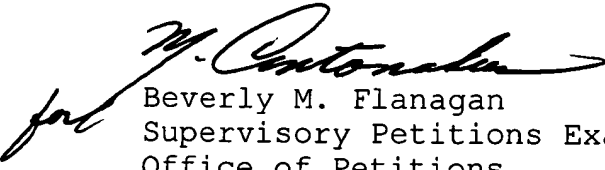
Page 48 of the specification has been located in the file. Accordingly, the "Notice" mailed on 16 January, 2001, was mailed in error and is hereby vacated to the extent that it states that Page 48 appeared to have been omitted from the application. The petition fee will be refunded.

Petitioner's contention that a signed oath or declaration, and the surcharge for its late filing, are not required is not well taken, as 37 CFR 1.63(f)(3) states that the requirement of 37 CFR 1.63(f)(1) for the filing of an oath or declaration, accompanied by the late filing surcharge, if an oath or declaration is not present at the time an application is filed applies to continuation or divisional application filed under 1.53(b) and (d). As a copy of the executed declaration from the prior application was not among the application papers deposited on 30 November, 2000, the Notice correctly requires a signed oath or declaration and a surcharge for its late filing. Receipt of the signed declaration filed on 9 February, 2001, is acknowledged.

The \$130.00 petition fee is unnecessary. \$65.00 thereof will be applied to the fee for late filing of an oath or declaration. The remaining balance of \$65.00 will be credited to counsel's deposit account, No. 15-0700.

The application is being returned to Initial Patent Examination Division for further processing using the copy of page 48 of specification supplied with the application papers filed 30 November, 2000. The copy of page 48 filed with the present petition will not be processed or examined, but will be retained in the application file.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy